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Rachele Marconi

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The International Criminal Tribunal for the former Yugoslavia (ICTY) has been renowned for [prosecuting and convicting several high-ranking officials](#) for rape and other forms of sexual violence committed during the war in the former Yugoslavia, but for wartime survivors of sexual violence this has only been a symbolic justice. Rachele Marconi looks at the case of A. v Bosnia in the fight for

recognition and effective reparations and why this case has been so significant.

Established in 1993 by the United Nations and operating until 2017, the ICTY was an international tribunal with the mandate to prosecute persons responsible for serious violations of international humanitarian law committed during the war in the former Yugoslavia. In line with the three-phase plan for the ICTY to work efficiently, the so called [Completion Strategy](#), many cases related to sexual violence were transferred from the ICTY to the domestic courts of Bosnia and Herzegovina with the aim of guaranteeing an effective transition from the ICTY to the national judiciaries.

However, as far back as 2009, Amnesty International [expressed its concerns](#) about the failure of the Bosnian authorities to provide survivors of conflict-related sexual violence (CRSV) with adequate compensation. The [sixth periodic report](#) submitted by Bosnia and Herzegovina to the Committee on the Elimination of Discrimination Against Women (CEDAW) in 2018 confirms these deficiencies, reporting the failure to adopt the drafted proposal of the [Programme for Victims of Wartime Rape, Sexual Abuse and Torture, and their Families in Bosnia and Herzegovina \(2013-2016\)](#) and the nonexistence of a fund for compensation of damages or of a reparation mechanism for victims of war in cases when perpetrators are unable to pay for compensation.

The case of Mrs A. v Bosnia

Mrs. A. is a Bosnian woman subjected to repeated rape by Mr. Savić, a member of the Vojska Republike Srpske, the Bosnian Serb Army,

during the armed conflict in Bosnia and Herzegovina. Only in 2014, represented by the NGO TRIAL International, did she spoke about the crimes committed against her to the authorities. On 29 June 2015, the courts of Bosnia and Herzegovina condemned the perpetrator of war crimes against civilians, in addition to eight years of imprisonment, he was ordered to pay 30.000 BAM (approximately €15.000) as compensation to Mrs A.

However, Mr. Savić was found insolvent and, since Bosnia and Herzegovina did not have a dedicated fund for survivors of crimes under international law, the victim could not receive any compensation. At this point, the last possible domestic remedy was the submission of a claim of non-pecuniary damage in a civil proceeding against Bosnia and Herzegovina. However, this solution was also not available to Mrs. A – according to the Constitutional Court of Bosnia and Herzegovina, these claims are to be considered time-barred after five years. In other words, the State could not be held liable for violations perpetrated during the war if the claim for non-pecuniary damage is submitted after five years meaning the survivors of war crimes are left without any effective remedy.

Case Significance

A claim was brought to the [UN Committee Against Torture \(CAT\)](#) whose decision on the case required the State redress Mrs. A. with fair and adequate compensation and with medical and psychological support, but also to institute an effective reparations programme for survivors of war crimes, including survivors of sexual violence at a national level.

In its decision, CAT offered a way out of the impasse that accounts for the gravity of the crime committed and the deficiencies of the Bosnian legal system in providing survivors of CRSV with redress, including fair and adequate compensation. According to the CAT, the statutes of limitations are not applicable in cases that involve the crime of torture. Since the Committee recognised that rape and sexual violence to which the survivor was subjected during the war constitutes torture, Bosnia and Herzegovina was found in breach of its obligation to provide redress to survivors of torture ([under Article 14 of the Convention against Torture](#)).



In its decision, CAT offered a way out of the impasse that accounts for the gravity of the crime committed and the deficiencies of the Bosnian legal system in providing survivors of CRSV with redress



This decision is ground-breaking in that it is the first time that the CAT has adopted a decision related to a survivor of CRSV and the first time

in which the court addressed the issue of the applicability of the statute of limitations on compensation claims for the crimes of torture and sexual violence.

International Significance

Although the decision of the CAT is not legally binding, it contributes to turn the spotlight once again onto the situation of Bosnian women who are survivors of CRSV fighting for real and effective justice after more than two decades. Bosnia and Herzegovina should now demonstrate to the international community its authentic and genuine will to provide real justice.



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The way Bosnia and Herzegovina will comply with the CAT's decision in the next months will also tell us a lot about the power of international institutions to promote effective justice with regard to the wartime survivors of sexual violence.

The relevance of the decision of the CAT goes beyond the Bosnian borders. In all cases in which CRSV qualifies as torture and the specific State fails in its obligation to compensate the victim, the survivor can now still have a chance to obtain redress – an important step in the international fight against impunity for conflict-related sexual crimes.

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About the author



Rachele Marconi is a Ph.D. candidate at the "Global Studies. Justice, Rights, Politics" programme at the University of Macerata, Italy. Her field of research is public international law and her Ph.D. thesis focuses on international law aspects of conflict-related sexual violence against women. She obtained her Master Law degree in 2016. Since then, she has been a Visiting Scholar at the Max Planck Institute of Comparative Public Law and International Law in Heidelberg (Germany) and Visiting Scholar at the Institute for Research of Crimes Against Humanity and International Law, at the University of Sarajevo. She was also worked as a research intern at TRIAL International, Sarajevo Office. Her recent research focus on the right to reparation for international crimes, with a particular attention to the case of the Korean 'Comfort women', and the contribution of the Inter-American Court of Human Rights in the struggle against all forms of sexual violence against women.

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